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7	Attorneys for Complainant				
8	BEFORE THE				
9	CALIFORNIA BOARD OF OCCUPATIONAL THERAPY DEPARTMENT OF CONSUMER AFFAIRS				
10	STATE OF CALI	FORNIA			· ·
11	In the Metter of the Davehietric Evelvetion Cos	se No. OT	2007.42		
12	In the Matter of the Psychiatric Evaluation Cas Against:	e No. O1	2007-43		
		CCUSA	TION		•
13	221 King Street, Apt. 112 San Francisco, CA 94107				
14	Occupational Therapist License No. OT				
15	8500		•		
16	Respondent.				
17					
18	Complainant alleges:				
19		1			
	<u>PARTIES</u>				
20	1. Heather Martin (Complainant) brings this Accusation solely in her official capacity as				
21	the Executive Officer of the California Board of Occupational Therapy, Department of Consumer				
22	Affairs.		· ·	•	
23	2. On or about October 28, 2005, the California Board of Occupational Therapy issued				
24	Occupational Therapist License Number OT 8500 to Katherine Kolbacki (Respondent). The				
25	Occupational Therapist License expired on December 31, 2008, and has not been renewed.				
26					•
27	1//		•		
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28			:.		

JURISDICTION

- 3. This Accusation is brought before the California Board of Occupational Therapy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
- 4. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.
 - 5. Section 2570.30 of the Code states:

"The board shall retain jurisdiction to proceed with any investigation, action or disciplinary proceeding against a license, or to render a decision suspending or revoking a license, regardless of the expiration, lapse, or suspension of the license by operation of law, by order or decision of the board or a court of law, or by the voluntary surrender of a license by the licensee."

STATUTORY PROVISIONS

6. Section 820 of the Code states:

"Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822."

7. Section 821 of the Code states:

"The licentiate's failure to comply with an order issued under Section 820 shall constitute grounds for the suspension or revocation of the licentiate's certificate or license."

8. Section 2570.28 of the Code states, in pertinent part:

"The board may deny or discipline a licensee for any of the following:

"(a) Unprofessional conduct "

COST RECOVERY

9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINARY ACTION (Failure to Comply With Order Issued Pursuant to

(Failure to Comply With Order Issued Pursuant to (Bus. & Prof. Code section 820)

- 10. Respondent has subjected her Occupational Therapist License to disciplinary action under Code section 821 in that she failed to comply with the Order of the California Board of Occupational Therapy issued under Code section 820. The circumstances are as follows:
- a. On or about July 26, 2010, in Case No. OT 2007-43 involving Respondent Katherine Kolbacki, Heather Martin (Petitioner) filed a Petition For An Order To Compel Psychiatric Examination. On or about July 26, 2010, the California Board of Occupational Therapy issued the Order directing Respondent to submit to a psychiatric evaluation to determine whether Respondent "is mentally ill to such an extent as to affect her ability to practice occupational therapy safely." The Order further provided that the examination was to be conducted no later than thirty (30) days after the service of the Order upon Respondent. (True and correct copies of the Petition For An Order To Compel Psychiatric Examination and the Order are attached as Exhibit "A" and incorporated herein by reference.)
- b. The Petition For An Order To Compel Psychiatric Examination and the Order were served upon Respondent by Certified and First Class Mail on August 2, 2010. As of August 31, 2010, Respondent has failed to comply with the Order.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Occupational Therapy issue a decision:

1. Revoking or suspending Occupational Therapist License Number OT 8500, issued to Katherine Kolbacki;